CHEOK LEK SAN v. YONG KAM CHIN

[F.C. (Suffian Ag. L.P., Gill and Ali F.JJ.) July 22, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 119 of 1969]

Landlord and Tenant — Landlord ceasing to have title to land — Attornment by tenant without knowledge of defect in title — Whether tenant can dispute title — Evidence Ordinance, 1950, s. 116.

In this case certain buildings on land held under a mining lease had been originally let by a tin mining company to the respondent. In October 1965 the mining lease of the land was cancelled and the land reverted to the State. On November 7, 1966 the tin mining company purported to sell the buildings to the appellant. The respondent paid rent after demand to the appellants from December 15, 1966 to March 1968. In April 1968 he stopped paying rent and the appellant obtained a writ of distress against the respondent. The respondent applied to have the warrant of distress set aside. In the High Court the warrant of distress was set aside and the appellant thereupon appealed. It was argued on behalf of the appellants that the respondents as tenants were estopped from disputing the title of his landlord.

Held, dismissing the appeal: (1) the respondent in this case was not seeking to show that his landlord had no title at the beginning of the tenancy but was in effect seeking to show that although the original landlord had title at the beginning of the tenancy he no longer had it when he purported to sell the buildings to the appellant and this he was entitled to do, if he was not prevented by the fact that he had attorned to the appellant;

(2) as the respondent in this case was not aware at the time of the attornment of the defect in the appellant's title he was not estopped from disputing the title to show that the appellant was not his landlord.

Cases referred to:-

(1) *Terunnanse* v. *Terunnanse* [1968] 2 W.L.R. 1125.

(2) *Kumar Krishna Prosad Lal Singha Deo* v. *Barabone Coal Concern Ltd. & Ors.* A.I.R. 1937 P.C. 251.

(3) *Fatimah* v. *Moideen Kutty* [1969] 1 M.L.J. 72.

(4) *E.H. Lewis & Son Ltd.* v. *Morelli* [1948] 2 All E.R. 1021.

(5) *Morton* v. *Woods* L.R. 4 Q. B. 304.

(6) *Jolly* v. *Arbuthnot* (1859) 4 De G. & J. 224; 45 E.R. 87.

(7) *Rogers* v. *Pitcher* 128 E.R. 1012.

(8) *Jew* v. *Wood & Ors.* 41 E.R. 451, 464.

(9) *Doe d. Higginbotham* v. *Barton* 11 A. & E. 307, 312; 113 E.R. 432, 434.

(10) *Rennie* v. *Robinson* 1 Bing. 147; 130 E.R. 60.

(11) *Ban Seng* v. *Yap Pak Soo* [1967] 2 M.L.J. 156.

(12) *Cornish* v. *Searell* (1828) B. & C. 471; 108 E.R. 1118, 1119.

The following additional cases were cited in argument: *Grovenor* v. *Woodhouse* 130 E.R. 18; *Serjeant* v. *Nash, Field & Co.* [1903] 2 K.B. 304, C.A.; *John Nadjarian* v. *E.F. Trist* A.I.R. 1945 Bombay 399; *Govindaraju* v. *Krishnan* [1962] M.L.J. 334; *Tay Cheo* v. *Chow Ngia* [1967] 1 M.L.J. 281; *D.V. Rajam* v. *P.G. Rajiah* A.I.R. 1953 Hyd. 241; *Cooke* v. *Loxley* (1892) 5 T.R. 4, 2 R.R. 521; *Panton* v. *Jones* (1813) 3 Camp. 372.

FEDERAL COURT.

D. P. Vijandran for the appellant.

Peter K. C. Yeoh for the respondent.

Cur. Adv. Vult.

Suffian Ag. L.P. (read by Gill F.J.): We are concerned here with four buildings on land known as Pajak Galian 4114, being part of Lot 31 in the Mukim of Setapak in section 85, Kuala Lumpur. It was land held under mining lease from the Selangor State Government. From 16th March, 1933, until 21st November, 1963 the lessee was the Renong Tin Dredging Co Ltd. On 18th January, 1955, the company sub-leased to one Fong. On 16th May, 1957, Fong transferred the sub-lease to the Weng Yip Tin Mine Co. Ltd.

On 1st May, 1963, the Tin Mine Co. let the buildings to the tenant (respondent) at $700 per month.

On 7th November, 1966, the Tin Mine Co. sold the buildings to the landlord (appellant). On 30th November the company's representative called at the buildings and told the respondent that they had been sold by the company to the appellant, and that in future the respondent was to pay the rent to the appellant. The respondent agreed and did so beginning from 15th December, 1966. He continued to do so until March, 1968. In April he stopped. The landlord obtained a warrant of distress to recover six months' rent for the period April 1968 to September 1968. The tenant applied to have the warrant of distress set aside.

It was alleged by the tenant that there had been fraudulent misrepresentation by the landlord as to the latter's title. The landlord's answer was that the tenant was estopped from disputing his title.

A land officer gave undisputed evidence that the mining lease had been cancelled on 20th April, 1965 (so that the land then reverted to the State), and that the landlord's name never appeared in the land office records at all. It is clear that when the Tin Mine Co. sold the buildings to the landlord on 7th November, 1966, they stood on land belonging to the Government. The tenant did not know this when he paid rent to the landlord. He first came to know of it only in April 1968 when he stopped paying rent.

The learned judge made two specific findings. He found first that a new tenancy had arisen by attornment and by virtue of section 116 of the Evidence Ordinance the tenant was precluded from disputing the landlord's title. Secondly, the learned judge found that the transfer of the premises by the Tin Mine Co. to the landlord was of no legal effect because then that company had no title to the land and the buildings, and nothing therefore passed from that company to the landlord and the latter was therefore unable to create the relationship of landlord and tenant between him and the tenant, and that the tenancy appeared to have been created under a mistake due to ignorance of the legal position at the time. (He did not find fraudulent misrepresentation on the part of the landlord.)

The learned judge set aside the warrant of distress. The landlord has appealed to us.

It is to be noted that there is no appeal or cross-appeal against the first finding. This appeal is only against the second finding that there was no valid tenancy and/or relationship of landlord and tenant between the appellant and respondent.

The question in this appeal is therefore whether or not the appellant was the respondent's landlord.

Chapter VIII of the Evidence Ordinance contains provisions relating to estoppel, but the Privy Council has held in an appeal from Ceylon (*Terunnanse* v. *Terunnanse*[1]) that it is legitimate when applying section 116 of that Ordinance to consult and give effect to the English cases, even if they appear to go further than the language of the section.

What the respondent is in effect saying here is not that his landlord had no title at the beginning of the tenancy. That he is expressly forbidden to do by section 116. What he is in effect saying is that his *original* landlord, the Tin Mine Co., had title at the beginning of his tenancy but no longer had it when it purported to sell the buildings to the appellant. This he is allowed to do, see the Privy Council case of *Kumar Krishna Prosad Lal Singha Deo* v. *Baraboni Coal Concern Ltd. and Others*[2] cited in a recent decision of this court (*Fatimah* v. *Moideen Kutty*[3]). If that is all, then the respondent can clearly dispute the appellant's title; but that is not all, because the respondent has attorned to the appellant by acknowledging him as his new landlord and by paying rent to him.

What is the effect of this attornment? The appellant says that it prevents the respondent from denying that the appellant had title and therefore the respondent must pay the rent.

If the respondent had known of the defect in the appellant's title, he would have been estopped from challenging the appellant's title. This was so decided by the English Court of Appeal in *E. H. Lewis & Son Ltd.* v. *Morelli*.[4] Delivering the judgment of the court, Harman J. said at page 1024:

"The doctrine that a tenant may not question his landlord's title is familiar law. This is sometimes said to rest on estoppel, and, when a lease is under seal, no doubt this is so. The doctrine, however, has been extended by analogy to written, and even to oral, tenancies. It has been well described as arising by intendment of law from the relationship of landlord and tenant: see Kelly, C.B., in *Morton* v. *Woods*[5], citing Lord Chemsford in *Jolly* v. *Arbuthnot*[6]. We do not think it operates by estoppel strictly so called in cases where there is no writing. The belief of the tenant in his landlord's ability to grant the term is not essential. He may know or have notice of a defect in his landlord's title and yet be precluded, once he has entered and paid rent, from denying it: see *Morton* v. *Woods*[5]."

But here at the time of the attornment the respondent did *not* know of the defect in the appellant's title. I think that this ignorance allows him to dispute the appellant's title as soon as he comes to know the true position. There are two old authorities in support of this.

In *Rogers* v. *Pitcher*,[7] decided in 1815, Dallas J. at page 1015 stated the law as follows:

"The rule is clear, that generally a tenant cannot dispute the landlord's title: but here it comes to this question, whether after a person has been in possession under another lessor, if he is persuaded to attorn under circumstances which do not warrant it, it may not be open to him to prove that the rent was paid without sufficient ground. And I think it is."

In 1841 the Lord Chancellor explained that decision in *Jew* v. *Wood and Others*[8] at page 464 as follows:

"*Rogers* v. *Pitcher*[7] ... that was a case of mere mistake as to the title of the party to whom the rent was paid. There was no misrepresentation by the party so obtaining payment of the rent: it was a mere misapprehension, and the payment of rent under such misapprehension was not considered as altering the situation of the tenant. He was permitted to call upon the person claiming his land to prove his title."

The law has been conveniently summarised by *Spenser-Bower and Turner* on Estoppel by Misrepresentation, 2nd Edition, page 173, as follows:

"Where a tenant, with full knowledge of the facts, ... attorns tenant to a person other than his original landlord .... he is ordinarily estopped from questioning the title of the person to whom he has attorned. But here, too, it is open to the party sought to be estopped to explain away the attornment, and so escape the estoppel to which he would otherwise be subject, by proof that when he so attorned, he was labouring under mistake or *ignorance as to material facts affecting the title of the person to whom he attorned...*"

I would therefore dismiss this appeal.

Gill F.J.: The facts in relation to this appeal are simple. Renong Tin Dredging Company Limited (hereinafter called "the lessees") obtained from the Government of the State of Selangor a lease known as Pajak Galian 4114 for the period 16th March, 1933 to 28th November, 1963 over approximately 67 acres of mining land which formed part of lot 31 in the Mukim of Setapak in section 85, Kuala Lumpur. On 18th January, 1955 they granted a sub-lease to one Fong Kim Chuen, who on 16th May, 1957 transferred the sub-lease to Weng Yip Tin Mines Co. Ltd. (hereinafter referred to as "the sub-lessees"). Situated on the land comprised in the sub-lease was a building consisting of four kongsi houses (hereinafter called "the said premises") which as from 1st May, 1963 the sub-lessees rented to Yong Kam Chin (the respondent) at a monthly rental of $700. By an agreement dated 7th November, 1966 the sub-lessees sold the said premises to Cheok Lek San (the appellant) for $8,000. The agreement provided, *inter alia*, that from then on the ownership of the building and tenancy of the land passed to the appellant.

On 30th November, 1966 a representative of the sub-lessees and the appellant called at the respondent's workshop in the said premises and informed him that he should thenceforth pay rent to the appellant to whom the premises had been sold.

Neither the appellant nor the respondent then knew that the lease, from which the sub-lessees derived their title to the premises, was due to expire on 28th November, 1963, nor were they aware that the Government had in fact cancelled the lease on 20th April, 1965. The respondent, believing what was represented to him as regards the sale of the premises by the sub-lessees to the appellant to be true, accepted the position that he was to pay rent to the appellant thereafter, and made his first payment of rent to the appellant on 15th December, 1966. Thereafter he continued to pay rent regularly up to the end of March, 1968.

In the meantime, soon after he had started to pay rent to the appellant, the respondent approached the appellant for a letter of consent to enable him to obtain a licence from the Municipality to carry on his business as a motor repairer at the premises. The appellant put him off on two or three occasions but

later informed him that he had no power to give such consent. Thereupon the respondent caused investigations to be made and discovered that the appellant had in fact derived no title to the premises by reason of the cancellation of the lease before the purported transfer of the premises to him by the sub-lessees. It was for this reason that he stopped paying rent as from 1st April, 1968.

The respondent having persistently refused to pay rent after 1st April, 1968, the appellant on 27th September, 1968 applied for a warrant of distress for the recovery of $4,200 being six months' rent from the month of April, 1968 to September, 1968. An order for a warrant of distress was made on 10th October, 1968 and the warrant was issued on the same day. Before the warrant could be executed the respondent deposited under protest a sum of $4,293 in court, and then applied to have the warrant of distress set aside. The application having been adjourned into open court, a hearing took place in due course before Syed Agil Barakbah J. who on 29th November, 1969 delivered judgment whereby the warrant of distress was discharged and an order made for the sum of $4,293 deposited in the court to be refunded to the respondent. It is against that judgment that this appeal has been brought.

It is to be observed that long before the date of the purported transfer of the tenancy to the appellant the sub-lease had come to an end with the cancellation of the lease, so that the title of the sub-lessees to the premises had ceased to exist. The appellant therefore can be said to have derived no right or interest in or title to the premises in respect of which the respondent attorned tenant to him. The appellant's contention, however, is that the respondent is estopped from disputing his title. The sole question to be determined in this appeal therefore is whether that is so. The answer to this question lies in the construction to be put on section 116 of the Evidence Ordinance, 1950 which reads as follows: —

> No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

The effect of section 116 of the Indian Evidence Act, from which we have taken our section 116, was considered by the Privy Council in *Krishna Prosad* v. *B. C. Concern.*[2] Sir George Rankin in delivering the judgment of the Privy Council in that case said at pages 254 and 255:

> "The section does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation. Whether during the currency of a term the tenant by attornment to *A* who claims to have the reversion, or the landlord by acceptance of rent from *B* who claims to be entitled to the term is estopped from disputing the claim which he has once admitted are important questions, but they are instances of cases which are outside S. 116 altogether; and it may well be that as in English law the estoppel in such cases proceeds upon somewhat different grounds and is not wholly identical in character and in completeness with the case covered by the section. The section postulates that there is a tenancy still continuing, that it had its beginning at a given date from a given landlord. It provides that neither a tenant nor anyone claiming through a tenant shall be heard to deny that that particular landlord had at that date a title to the property. In the ordinary case of a lease intended as a present demise — which is the case before the Board on this appeal — the section applies against the lessee, any assignee of the term and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g., by attornment, acceptance of rent, etc. In this sense it is true enough that the principle only applies to the title of the landlord who 'let the tenant in' as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end."

> "There is in English case law some authority for the view that a tenant is only estopped from denying his landlord's title if at the time when he took his lease he was not already in possession of the land. But in S. 116, the Indian Legislature has formulated no such condition. The words 'at the beginning of the tenancy' give no ground for it. When a demise of land is made and acted on, when the tenant proceeds to occupy and enjoy under the grant, gets the shelter of the grantor's title and the benefit of his covenants, it is difficult to see why 'during the continuance of the tenancy' he should be free of this form of estoppel. 'Tenant who has occupied but not entered' is a difficult notion to thrust into S. 116 and quite impossible to find therein."

In *Terunnanse* v. *Terunnanse*[1] the Privy Council decided that section 116 of the Evidence Ordinance was to be interpreted and expanded in the light of the English common law.

As regards the English case law, I need mention only the old case of *Doe d. Higginbotham* v. *Barton*[9] in which Lord Denman C.J. said:

> ".... the tenant cannot deny that the person by whom he was let into possession had title at that time, but he may shew that such title is determined. With respect to the title of a person to whom the tenant has paid rent, but by whom he was not let into possession, he is not concluded by such payment of rent, if he can shew that it was paid under a mistake."

Halsbury, 3rd edition, Volume 15, paragraph 459, at page 249 sums up the position as follows: —

> "Where the person claiming as landlord is not the person by whom the tenant was let into possession, evidence may be received to show that the relation of landlord and tenant does not in fact exist. Thus in the case of an assignee of the lessor, though he is to all intents and purposes in the same situation as the lessor, and takes the benefit of and is bound by a lease by estoppel, the lessee is not estopped from showing that the lessor had no such title as he could pass to the assignee, or that the person claiming to be the assignee is not in fact the true assignee."

In its commentary on section 116, *Woodroffe & Ameer Ali's* Law of Evidence, 12th Edition, Volume 3, at pages 2443-44 has this to say:

> "The question, whether the relation of landlord and tenant exists may have to be decided under one of two possible cases: (i) where the plaintiff has let the defendant into possession of the land; (ii) when the plaintiff is not himself

the person who let the defendant into possession, but claims under a title derived from the person who did. This section applies to the first case and estops the tenant from denying the landlord's title. In the second case of derivative title (that is, by assignment, including gift, sale, devise, lease or by inheritance, including adoption amongst Hindus), when the plaintiff claims by derivative title, the defendant is not estopped from showing that the title is not really in the plaintiff, but in some other person. As the estoppel is available against the representatives of the lessee, so it ensures for the benefit of those claiming under the original lessor. Thus, in the case cited below (*Rennie* v. *Robinson*[10]), the defendant hired apartments from one *W*, who afterwards let the entire house to the plaintiff. In an action by the latter against the defendant for use and occupation, it was held that the defendant, having used and occupied the premises under a lease from *W*, was not competent to impeach his title or that of the plaintiff who claimed through him. Further, an attornment to one claiming under the original lessor leaves the tenant ordinarily in precisely the same position (so far as the question of the estoppel to deny the title of the lessor is concerned) as he was with the original landlord; he cannot dispute title in the one case more than in the other. Whether, however, there be an attornment or not, the tenant may always show that the claimant has no derivative title from his original lessor or that the derivative title is defective, or that an attornment made by him to the person claiming under the original lessor was made under the influence of fraud or mistake, or the like."

Sarkar on Evidence, 11th Edition, Volume 2, at pages 1117 and 1118, cites the following passage from *Cababe*,* pp. 25-27, as to the legal position where the landlord is not the person who let the tenant into possession:

"The question naturally presents itself, is there any estoppel if the person in possession has recognised the position as landlord of, or agreed to become, tenant to, a person who has neither himself let him into possession, nor is the successor in title of any one who has? Now, if the person who so comes forward claiming to be owner, tells the party in possession all the facts with reference to his claims, and the latter with full knowledge, decides to acquiesce in such claim, and to become tenant, notwithstanding any known or suspected defects of title, all this amounts to a readiness to deal on the basis of the claim put forward being a valid one as between them; and whether or not an idle form of first handing back the position, and then having it handed back again, be gone through as a preliminary or not, can make no difference. In such a case, the tenant would be in just the same position, as to the admission of title, as if he had originally received possession from the party whose tenant he has agreed to become; and he would have to give back the possession, before he could controvert the admission. On the other hand, if a party already in possession recognise as landlord, one who neither gave him possession, nor is the successor in title of one who did so, in ignorance of facts which would have shown that the party claiming to be landlord had in fact no title, which facts were either withheld from him by the party so claiming, or were equally unknown to both, such recognition, whether it takes the form of an attornment, a payment of rent or the entering into a new agreement, will not preclude the party in possession, on subsequently discovering the want of title, from refusing to regard the other party any longer, as his landlord; and in such a case, it is not a condition precedent to his right to set up such want of title that he should give possession to a party he had so long been recognising as landlord; for he never received possession from the latter, nor from his predecessor in title, and the restoration, of the *status quo ante* does not here require any such giving up of possession. It need scarcely be added that the position of a landlord who did originally give possession, and who, after the expiration of his title induces the tenant to pay him rent, is just the same as that of the party who comes forward and claims to be landlord in the case just put."

* *Cababé, M.*, An Essay on the Principles of Estoppel (London, 1888).

The distinction between the right of a tenant to deny the title of his original landlord and a landlord with a derivative title is well brought out in two local cases. In *Ban Seng* v. *Yap Pek Soo*[11] the plaintiff put up the premises in question on State land with the permission of the then holder of the temporary occupation licence in respect of the land. In 1960 he allowed the defendant to go into occupation as a monthly tenant. The defendant paid rent regularly for six years, but stopped paying rent after he received a summons for illegal occupation of State land. His defence was that he was not liable to pay rent as the house was illegally erected on State land. It was held by the High Court, dismissing an appeal from the magistrate's court, that the fact that the plaintiff had no temporary occupation licence at the beginning of the tenancy or at any time subsequently was no bar to the action because the defendant was estopped by section 116 of the Evidence Ordinance, 1950 from denying the title of his landlord.

In *Fatimah* v. *Moideen Kutty*,[3] however, it was held that section 116 of the Evidence Ordinance did not estop the tenant (the respondent) from denying the title of the widow (the appellant) as administratrix of the estate of her deceased husband who during his lifetime was the owner of two shop houses on a piece of State land held by him under a temporary occupation licence and which he had rented to the respondent at a rental of $40 per mensem. The deceased had died in 1962 and when the Collector of Land Revenue heard of the death he refused to renew the licence after the end of 1963. The appellant as administratrix claimed rent in respect of the period July 1, 1964 to February 28, 1965. It was held in the magistrate's court and on appeal to the High Court that she was not entitled to the rent. On further appeal, this court in dismissing the appeal held that whatever may have been the deceased's or the widow's right between the deceased's death and the end of 1963, thereafter as the government had refused to renew the temporary occupation licence neither his estate nor the administratrix had any right of any kind whatever to the land. It was further held that section 116 of the Evidence Ordinance did not prevent the tenant from contending that neither the deceased nor the widow had any title to the land in respect of the material period, because he was not saying that the deceased or the widow had no title at the beginning of the tenancy but contending that the deceased's title had come to an end.

In the present case, the learned judge found that as a tenancy had arisen between the appellant and the respondent by attornment, which has been defined by Holroyd J. in *Cornish* v. *Searell*[12] as "the act of the tenant's putting one person in the place of another as his landlord", the respondent was precluded by virtue of section 116 from disputing the appellant's title. But he went on to find that, as the sub-lessees had no title to the land on which the premises stood, by reason of the termination of the lease which was the basis of their sub-lease, nothing passed from them to the appellant, with the result that the so-called tenancy was created under a mistake as to the appellant's title to the premises. And this the respondent was clearly not estopped from proving.

In my judgment, in the light of the authorities which I have cited above, the learned judge's findings are not open to question. I would dismiss this appeal with costs.

Ali F.J. concurred.

Appeal dismissed.

Solicitors: *Athi Nahappan & Co.*; *Yeo & Yeo.*

M.A. CLYDE v. WONG AH MEI & ANOR.

[F.C. (Suffian Ag. L.P., Gill and Ali F.JJ.) July 22, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 116 of 1969]

Negligence — Res ipsa loquitur — Bicycle knocked from behind by a motor car — Onus on driver of motor car to explain — Contributory negligence — Defendant not giving evidence.

Evidence — First information report — Whether admissible in civil proceedings — Evidence Ordinance, 1950, ss. 17, 18 and 21.

In this case the respondent had claimed damages in respect of the death of one Soon Ah as a result of his being knocked down by a car driven by the appellant. The learned trial judge found in favour of the respondent, as he held that the bicycle on which the deceased was riding was knocked down from behind by the appellant's car. He held that the onus to explain why the collision took place was with the appellant and as the appellant had chosen not to give evidence, he gave judgment against her. A report made by the appellant to the police about the accident was admitted in evidence and on appeal it was argued *inter alia* that the evidence had been wrongly admitted.

Held, dismissing the appeal: (1) negligence is a question of fact and each case must depend on its own facts. There is no rule of law which in every case disqualifies a motorist from recovering damages where he has run into a stationary unlighted object on the ground that he was thereby shown to be negligent. In this case however the appellant had chosen to give no evidence and the learned trial judge was justified in holding that there was a case for the appellant to answer and as she had failed to do so, that she was liable;

(2) the learned trial judge was justified in holding that the doctrine of *res ipsa loquitur* applied and that therefore the onus lay on the appellant to explain why she knocked the deceased from behind and, as the appellant chose not to give any explanation, judgment was rightly given against her;

(3) the report of the appellant in this case was a first information report and was admissible under sections 17, 18 and 21 of the Evidence Ordinance, 1950.

Cases referred to:-

(1) *Rengasamy Chettiar* v. *Periasamy* [1937] M.L.J. xxv.

(2) *Martin Rhienus* v. *Sher Singh* [1949] M.L.J. 201.

(3) *State of Gujarat* v. *Hiralal Devji* A.I.R. 1964 Gujarat 261.

(4) *Bishen Das* v. *Ram Labhaya* A.I.R. 1916 Lahore 133.

(5) *Page* v. *Richards & Draper* (1920) 36 English & Empire Digest 92, para. 502 cited in 149 L.T. p. 263, D.C.

(6) *Yow Fook* v. *Weong Kim Tew* [1961] M.L.J. 38.

(7) *Butterfield* v. *Forrester* (1809) 11 East 60; 103 E.R. 926.

(8) *Davies* v. *Mann* (1842) 10 M. & W. 546; 152 E.R. 588.

(9) *Radley* v. *London & North Western Rly. Co.* (1876) 1 App. Cas. 754, 759.

(10) *British Columbia Electric Railway Co. Ltd.* v. *Loach* [1916] 1 A.C. 719.

(11) *Boy Andrew (Owners)* v. *St. Rognvald (Owners)* [1948] A.C. 140.

(12) *Tart* v. *G.W. Chitty & Co. Ltd.* [1933] 2 K.B. 453; (1933) 149 L.T. 261; [1931] All E.R. Rep. 826.

(13) *Baker* v. *E. Longhurst & Sons Ltd.* [1933] 2 K.B. 461.

(14) *Tidy* v. *Battman* [1934] 1 K.B. 319.

(15) *Stewart* v. *Hancock* [1940] 2 All E.R. 427.

(16) *Morris* v. *Luton Corporation* [1946] 1 K.B. 114.

(17) *Hill-Venning* v. *Beszant* [1950] 2 All E.R. 1151.

(18) *Colvilles Ltd.* v. *Devine* [1969] 1 W.L.R. 475, 477; [1969] 2 All E.R. 53, 56.

(19) *Scott* v. *London & St. Katherine Docks & Co.* (1865) 3 H. & C. 596, 601; 159 E.R. 665, 667.

(20) *Roe* v. *Minister of Health* [1954] 2 Q.B. 66, 88.

(21) *Woods* v. *Duncan* [1946] A.C. 401, 439.

(22) *Barkway* v. *South Wales Transport Co. Ltd.* [1948] 2 All E.R. 460; [1950] 1 All E.R. 392.

(23) *Laurie* v. *Raglan Building Co.* [1941] 3 All E.R. 332.

(24) *Moore* v. *R. Fox and Sons* [1956] 1 All E.R. 182.

(25) *Walsh* v. *Holst & Co. Ltd.* [1958] 3 All E.R. 33.

(26) *Swan* v. *Salisbury Construction Co.* [1966] 1 W.L.R. 204.

(27) *Ludgate* v. *Lovett* [1969] 1 W.L.R. 1016; [1969] 2 All E.R. 1275.

(28) *Pearce* v. *Round Oak Steel Works Ltd.* [1969] 3 All E.R. 680; [1969] 1 W.L.R. 595.

(29) *Henderson* v. *Henry E. Jenkins & Sons* [1969] 3 All E.R. 756.

(30) *Mummery* v. *Irvings Proprietory* (1956) 96 C.L.R. 99.

(31) *Nominal Defendant* v. *Haslbauer* (1967) 117 C.L.R. 448.

FEDERAL COURT.

S. D. K. Peddie for the appellant.

Tara Singh Sidhu for the respondents.

Cur. Adv. Vult.

Gill F.J.: This appeal arises out of an action by the respondents as plaintiffs against the appellant as defendant, in which they claimed and were awarded damages under sections 7 and 8 of the Civil Law Ordinance, 1956 in respect of the death of one Soon Ah alias Chan Kui Soon as a result of his being knocked down by a car driven by the defendant. The quantum of damages having been agreed upon between the parties, the question as regards liability was decided by the trial court against the defendant. From that decision the defendant has now appealed to this court.

The accident occurred at the 10th mile, Federal Highway at about 10.10 p.m. on 22nd August, 1963 when the deceased was riding a bicycle in the direction of Kuala Lumpur and the defendant was driving her motor-car SS 3784 in the same direction. Prior to his death the deceased lived with his wife and children at house No. E573 Sungei Way New Village which is situated on the right hand side of the Federal Highway as one goes from Kuala Lumpur to Klang. On the same side of the Highway about 1½ miles further up from the new village on its Klang side is a row of ten shop houses, one of which belonged to the deceased's wife whose tenant then was one Suppiah. On the date